



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**Washington, DC 20515**

**James L. Oberstar**  
**Chairman**

**John L. Mica**  
**Ranking Republican Member**

November 20, 2009

David Heymsfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

The Honorable Jack Markell  
Office of the Governor  
Tatnall Building  
William Penn Street  
2nd Floor  
Dover, DE 19901

Dear Governor Markell:

The Committee on Transportation and Infrastructure is committed to ensuring that funds provided pursuant to the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (Recovery Act) are invested quickly, efficiently, and in harmony with the job-creating purposes of the Act. Throughout development of the Recovery Act, we emphasized the importance of transparency and accountability and ensured that the transportation and infrastructure provisions are subject to the most rigorous transparency and accountability requirements of the Act.<sup>1</sup>

Over the past nine months, many States have moved forward aggressively to use the funds provided under the Recovery Act for Clean Water State Revolving Fund (SRF) projects to create and sustain family-wage jobs, contribute to our nation's long-term economic growth, and help the United States recover from the worst recession since the Great Depression.

***Regrettably, Delaware is not among these States. Based on the State progress reports submitted to the Committee in October 2009, Delaware is falling far behind other States in putting to work its wastewater infrastructure Recovery Act funds. According to submissions received from all States and the District of Columbia, your State, along with five other States and the District of Columbia, ranks last of all States,<sup>2</sup> based on an analysis of the percentage of wastewater infrastructure Recovery Act funds put out to bid, under contract, and underway.<sup>3</sup> As of September 30, Delaware has put out to bid, signed contracts for, and begun construction on zero projects.***

<sup>1</sup> See P.L. 111-5, § 1201. In addition to the statutory reporting requirements of the Recovery Act, the Committee has requested and received transparency and accountability information on implementation of the transportation and infrastructure provisions of the Recovery Act from Federal agencies, States, metropolitan planning organizations, and public transit agencies. Those recipients have reported regularly to the Committee.

<sup>2</sup> These rankings include the 50 States and the District of Columbia. The rankings do not include the Territories.

<sup>3</sup> According to the State's submission, as of September 30, 2009, zero percent of Delaware's Recovery Act funds for Clean Water SRF projects are out to bid, are under contract, or are underway. Nationally, 47.9 percent of Recovery Act

In addition, I write to follow-up on our previous correspondence regarding Recovery Act funding for highway infrastructure investment. On October 1, 2009, I sent you a letter to urge you to focus your efforts on investment of Recovery Act highway formula funds because Delaware lagged far behind other States. In response, Ms. Carolann Wicks, the Delaware Secretary of Transportation, sent me an October 5, 2009 letter, defending Delaware's implementation plan. In her letter, Ms. Wicks recommends that the Committee on Transportation and Infrastructure, "differentiate between the suggested standards [the Committee on Transportation and Infrastructure] identified and those actually established by Congress and the President." The letter insists: "We believe ARRA funds for Delaware are better spent wisely, as opposed to quickly."

***Ms. Wicks' defense of Delaware's highway investment implementation plan overlooks the basic purpose of the Recovery Act: to invest these funds in ready-to-go projects to create and sustain family-wage jobs. In addition, her defense runs contrary to the plain language of the Recovery Act and the Act's extensive legislative history, which clearly indicate that Congress and the Obama administration expected States to quickly invest these funds, create and sustain family-wage jobs, and help the United States recover from the worst recession since the Great Depression. Finally, it is unclear why Delaware, unlike other States, is not able to invest these funds quickly and wisely.***

Ms. Wicks' response asserts that Delaware, "will continue to follow the formal rules set out by Congress and the administration." The letter explains that Delaware has met or plans to meet the following Recovery Act provisions: 1) Priority be given to projects that can be completed within three years (February 17, 2012) of the date of enactment;<sup>4</sup> 2) Fifty percent of funds apportioned to States be obligated within 120 days (June 30, 2009) of the date of apportionment;<sup>5</sup> and 3) All funds be obligated within one year (March 2, 2010) of the date of apportionment.<sup>6</sup> While Ms. Wicks correctly notes these key Recovery Act provisions, she overlooks the statutory requirement that States give preference to quick-start projects.

The Recovery Act explicitly requires that, "recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds

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funds for Clean Water SRF projects are out to bid, 30.2 percent of funds are under contract, and 23 percent of funds are underway.

<sup>4</sup>American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § Title XII (2009).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Ms. Wicks' letter also cites two proposed long-term projects as reasons for delaying construction. Ms. Wicks explains that these major new projects require additional time for proper planning. Yet, the Federal Highway Administration (FHWA), as early as November 2008, worked with States to prepare for economic recovery legislation and develop lists of ready-to-go projects. In December 2008 and January 2009, FHWA repeatedly issued "questions and answers" on economic recovery issues and held videoconferences and teleconferences with Division Administrators and AASHTO to work through concerns that had arisen during this process. The objective was to make certain that all projects identified were "ready-to-go" shortly after enactment of a recovery act.

Beginning in November 2008, FHWA encouraged States to determine whether their Statewide Transportation Improvement Program ("STIP") needed to be amended in preparation for economic recovery legislation, and if so, to start the process immediately. FHWA informed States that for necessary STIP amendments, States should assume that they would receive double their FY 2008 apportionment for FY 2009. This amended process allowed States to modify their STIP prior to the date of enactment of the Recovery Act. Unfortunately, Delaware did not amend its STIP to include these two new projects (I-95 Toll Plaza and Market Street projects) until April 6, 2009.



for activities that can be initiated not later than 120 days [June 17, 2009] after the date of enactment of this Act.”<sup>7</sup> ***This requirement is not my “suggested” standard: the law mandates that States give preference to projects that can be started and completed quickly.***

Beyond this statutory requirement, the legislative history leaves no doubt that Congress and the Administration intended that States use Recovery Act funds for shovel-ready projects.

In October 2008, the Committee on Transportation and Infrastructure held a hearing on the role that infrastructure investment could play in restoring the nation’s economic health. I emphasized that, “there is a huge backlog of infrastructure projects that are ready-to-go, as soon as additional funds are made available.”<sup>8</sup> I discussed maintenance and facility repair projects, which, “can move very quickly, with work beginning within 90-120 days.”<sup>9</sup> In fact, according to a December 2008 American Association of State Highway and Transportation Officials (AASHTO) survey of State Departments of Transportation, there were \$66 billion in ready-to-go highway and bridges projects, including \$125 million in Delaware. According to a January 2009 American Public Transportation Association (APTA) survey, there were \$15.9 billion in ready-to-go transit projects.<sup>10</sup>

During floor debate on the Recovery Act in February 2009, Senator Inouye, Chairman of the Committee on Appropriations of the U.S. Senate, insisted that all States prepare to begin construction on shovel-ready projects. The Senator explained, “With this large influx of Federal funding now headed to our States, including my home State of Hawaii, it is essential that each State has a plan of action in place to ensure that these resources are invested quickly and responsibly, and in the right places.”<sup>11</sup>

Vice President Biden also emphasized the need to act quickly. In early March 2009, just two weeks after enactment of the Recovery Act on February 17, 2009, the Vice President explained that the American people, “could not wait for us to get started,” and that government has, “a duty and a responsibility to put to work the resources in the economic recovery package at a record speed and with record transparency.”<sup>12</sup>

***Although I expect Delaware to meet the minimum statutory mandates of the Recovery Act, we strongly urge you to refocus your efforts to implement the Recovery Act and use the available highway, transit, and Clean Water SRF funds to create and sustain***

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<sup>7</sup> *Id.* § 1602.

<sup>8</sup> *Investing in Infrastructure: The Road to Recovery*, 110th Cong. (2008) (statement of the Honorable James L. Oberstar, Chairman, Committee on Transportation and Infrastructure)

<sup>9</sup> *Id.*

<sup>10</sup> In January 2009, the Committee held a second hearing on infrastructure investment, where I emphasized Congress’ intention that the Recovery Act, “jump-start our economy and create a substantial number of new construction jobs by June [2009].” *Investing in Infrastructure: The Road to Recovery*, 111th Cong. (2009) (statement of the Honorable James L. Oberstar, Chairman, Committee on Transportation and Infrastructure).

<sup>11</sup> 155 CONG. REC. S2257, 2310 (daily ed. Feb. 13, 2009) (statement of Sen. Inouye).

<sup>12</sup> Press Release, Vice President Joe Biden, President Obama and Vice President Biden Announce Investment in Transportation Infrastructure and Jobs for Americans (Mar. 3, 2009), *available at* [http://www.whitehouse.gov/the\\_press\\_office/President-Obama-and-Vice-President-Biden-Announce-Investment-in-Transportation-Inf/](http://www.whitehouse.gov/the_press_office/President-Obama-and-Vice-President-Biden-Announce-Investment-in-Transportation-Inf/).

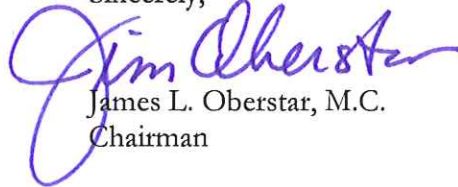
The Honorable Jack Markell

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*family-wage jobs. These jobs are critical to Delaware's and the nation's long-term economic growth.*

Sincerely,

A handwritten signature in blue ink, reading "Jim Oberstar". The signature is fluid and cursive, with the first name "Jim" and last name "Oberstar" clearly visible. The signature is positioned above the printed name and title.

James L. Oberstar, M.C.  
Chairman

cc: The Honorable Joseph Biden  
The Honorable Thomas R. Carper  
The Honorable Edward E. Kaufman  
The Honorable Michael N. Castle  
The Honorable Ray LaHood  
The Honorable Matthew P. Denn, Lt. Governor  
The Honorable Carolann Wicks, Secretary  
Mr. Thomas P. McGonigle, Chief of Staff  
Ms. Missy Wier, Director, Washington D.C. Office  
Mr. Brett Taylor, Financial and Legislative Policy Advisor